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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

In re M.J., et al., Persons Coming Under  
the Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

RAINA F.,

Defendant and Appellant.

B218651

(Los Angeles County  
Super. Ct. No. CK36959)

APPEAL from an order of the Superior Court of Los Angeles County. Jacqueline H. Lewis, Judge. Affirmed.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the Los Angeles County Counsel, James M. Owens, Assistant County Counsel and Frank J. DaVanzo, Deputy County Counsel, for Plaintiff and Respondent.

Appellant Raina F. (mother) appeals from the juvenile court's order terminating her parental rights over minors M. J. (born in June 2001) and T. J. (born in July 2003). Mother's sole basis for challenging the order is that minors are not adoptable. Substantial evidence supports the juvenile court's finding of adoptability, and we therefore affirm the order terminating parental rights.

## **BACKGROUND**

### **1. Detention, Section Petition, and Review Proceedings**

In February 2005, the Los Angeles County Department of Children and Family Services (the Department) detained minors from the custody of mother and father, Leon J.,<sup>1</sup> based on allegations of domestic violence, substance abuse by both parents, and physical abuse of T. On February 3, 2005, the juvenile court found a prima facie case for detaining minors from the parents, ordered minors detained in shelter care, and granted the parents monitored visitation. On February 24, 2005, the juvenile court gave the Department discretion to place minors with their paternal grandparents, and on March 8, 2005, the Department notified the court that it had placed minors with the grandparents.

On June 2, 2005, the Department reported that mother had enrolled in a drug treatment program, but her attendance was poor. Mother tested positive for amphetamine and methamphetamine in May 2005. She had not submitted to random drug testing for the Department.

Mother was not present at the contested adjudication hearing held on June 23, 2005. The juvenile court sustained the allegations in an amended petition under Welfare and Institutions Code section 300<sup>2</sup> that mother and father had an unresolved history of domestic violence, that T. had sustained non-accidental injuries that mother could not satisfactorily explain, that mother had a six-year history of substance abuse, rendering her incapable of providing the children with regular care and supervision, and that mother

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<sup>1</sup> Father is not a party to this appeal.

<sup>2</sup> All further statutory references are to the Welfare and Institutions Code, unless stated otherwise.

had failed to reunify with minors' older siblings who were dependents of the juvenile court. Because of mother's failure to reunify with her other children, the juvenile court denied her reunification services pursuant to section 361.5, subdivision (b)(10).<sup>3</sup>

In October 2005, the Department reported that minors remained placed with their paternal grandmother. Mother had two monitored visits in March and May 2005, but missed all other visits. After submitting three positive drug tests, mother stopped attending her treatment program, moved residences several times, and thereafter could not be located.

The paternal grandmother reported that M. had begun to act out sexually with T. and with Jordan, a female cousin who also lived in the grandmother's home. The paternal grandmother had found M. and Jordan in bed together one night and Jordan disclosed that M. removed Jordan's underwear and touched her in a sexual manner. The paternal grandmother also found two-year-old T.'s diaper removed one night. When asked what had happened, T. responded, "Lay," his word for M. A forensics specialist from the Los Angeles County Sheriff's Department interviewed M. and concluded the child had been sexually abused. M. was referred to therapy, and services were provided to the paternal grandmother to address M.'s sexualized behavior.

On December 6, 2005, the juvenile court terminated father's reunification services and set a section 366.26 hearing to determine a permanent plan for minors. The court ordered the Department to conduct a due diligence search to locate mother. By March 4, 2006, mother's whereabouts remained unknown.

## **2. Legal Guardianship**

In an April 4, 2006 section 366.26 report, the Department reported that mother had contacted the Department's social worker and provided a mailing address in Las Vegas, Nevada. In March 2006, however, the maternal grandmother told the social worker that

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<sup>3</sup> Section 316.5, subdivision (b)(10) provides that reunification services need not be provided to a parent when the juvenile court finds that the parent failed to reunify with a sibling who had been removed from the parent's custody.

mother had moved and did not want to disclose her new address. Mother's whereabouts therefore remained unknown.

The paternal grandmother said that mother never called to speak to minors but that she had called to try to arrange a visit with the children. The paternal grandmother had advised mother that visits needed to be arranged through the Department and referred her to the social worker. Mother subsequently left a voice message for the social worker but did not leave a telephone number where she could be contacted.

M.'s behavior continued to be a challenge for the paternal grandmother. She engaged in physical altercations with T., pushing him off a top bunk bed, and pushing him off a trampoline. She was also purportedly stealing money from the grandparents. Despite these issues, the paternal grandmother stated she was interested in pursuing legal guardianship over both children if reunification efforts failed. On April 25, 2006, the juvenile court appointed the paternal grandparents as minors' legal guardians.

In January 2007, the Department reported that the paternal grandmother's problems with M. persisted. M. misbehaved at school and continued to act out sexually with T. M. told the social worker that a voice in her head told her to do these things. M. was in therapy and was taking Depakote for her behavioral issues.

T.'s behavior had also become a problem. At school he hit other children, took their food, and drank water out of the toilet. The paternal grandmother reported that T. had an abnormally large appetite and never seemed to be satisfied. Although he was well fed, T. would sneak into the pantry while the rest of the family was asleep and eat all of the food. The paternal grandmother said that T. appeared to have multiple personalities and referred to himself from time to time as either Reggie or DJ. According to the paternal grandmother, DJ was mean and consumed all of the food in the house. When T. became Reggie, he dressed like a girl and wore pink hair accessories.

On January 17, 2007, the juvenile court continued the matter for an additional six months of supervision and ordered the Department to address the possibility of terminating jurisdiction over the guardianship.

In July 2007, the social worker expressed concerns about minors and the stability of their home, in light of the paternal grandmother's frustrations in dealing with the children's behavioral issues. M. continued to act out sexually with other children and needed constant supervision. The paternal grandmother described T.'s behavior as "out of control." He used profanity towards his teacher, slapped his classmates in the face, ate food out of the school trash cans, and drank water from the school toilets. He also had an uncontrollable appetite and snuck food out of the refrigerator at home after everyone else went to bed, despite having an adequate quantity of food throughout the day. The paternal grandmother said that she had to tie the refrigerator handles together to keep T. from sneaking food out at night. The social worker noted that the paternal grandmother had not been cooperative regarding minors' needs and had failed to provide the social worker with any of the children's medical or dental information since 2005. The social worker recommended continued jurisdiction to ensure minors' well-being.

On July 17, 2007, the juvenile court appointed Timothy Collister, Ph.D. (Collister) pursuant to Evidence Code section 730<sup>4</sup> to evaluate the nature and quality of the children's relationship to their paternal grandmother, as well as the children's behavioral problems.

In September 2007, the social worker reported that the paternal grandmother did not want to travel to Collister's Huntington Park address to complete the children's psychological evaluation. The social worker was attempting to resume the children's therapy. T.'s therapy had been terminated in July 2007 because of poor attendance. At the September 19, 2007 review hearing, minors' counsel stated that the paternal grandmother had agreed to cooperate and that the children's psychological evaluation would be completed within a couple of months.

In February 2008, the Department received a child abuse referral from a teacher at M.'s school. M. had told the teacher she was afraid to go home because the paternal

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<sup>4</sup> Evidence Code section 730 provides that the court may, on its own motion or on the motion of any party, appoint an expert to provide a report on any matter as to which expert evidence may be required.

grandmother hit her when she did not do her homework correctly. A social worker interviewed M. at school and at home and concluded the abuse allegations were unfounded.

By March 2008, the paternal grandmother had still not appeared at Collister's office for the psychological evaluation. A newly assigned social worker met with the paternal grandparents, who said that the children's behavior was too much for them to handle. The social worker suggested that the grandparents retain care of one child only and allow another relative to care for the other child. The paternal grandparents agreed and suggested T.'s godparents as possible caregivers.

In April 2008, minors' counsel renewed her request for Collister's evaluation of the children and noted that the paternal grandmother had thwarted completion of that evaluation for nearly a year. On April 21, 2008, minors' counsel filed a section 388 petition, alleging that the paternal grandparents were physically abusing the children, that the paternal grandmother had failed to comply with the order for an Evidence Code section 730 evaluation of the children, and that the paternal grandmother had told minors' counsel that she could no longer care for the children.

In April 2008, minors remained in the paternal grandparents' home, but T. was having extended visits with his godparents. The paternal grandmother reported that M.'s behavior had improved substantially since T. was out of her home. T.'s godmother reported that he was exhibiting the same behavior in her home as he had in the home of the paternal grandmother.

On June 4, 2008, the juvenile court granted the section 388 petition filed by minors' counsel and terminated the paternal grandparents' legal guardianship. The court set a second section 366.26 hearing for November 19, 2008, and accorded monitored visitation to the paternal grandparents.

At the end of June 2008, minors were placed in separate foster homes and were adjusting well to their placements. The respective caregivers expressed an interest in adopting the children. T.'s godparents told the social worker that returning T. to their

home at the current time would be a financial hardship for the family but that they were interested in becoming T.'s permanent caregiver in the future.

### **3. Evidence Code Section 730 Psychological Evaluation**

In July 2008, the Department presented Collister's psychological evaluation of the children and the paternal grandmother. Collister diagnosed M. with depression, oppositional defiance, and posttraumatic stress disorder, as the result of past abuse while under mother's care and psychodynamic conflicts with the paternal grandmother. His diagnosis of T. included deficit hyperactivity disorder, oppositional defiance disorder, and possible bipolar disorder. Collister concluded that it was more probable than not that the children had been physically abused, and that there was a risk of future abuse if the children remained in the paternal grandmother's care.

Collister recommended individual therapy for both children "with a seasoned licensed professional" and that T. be referred for medication review and for an after school program that incorporated behavior modification techniques. He further recommended that T. be placed with caregivers who had been trained in operant conditioning theory and behavior modification techniques consistent with that theory. Collister did not foreclose the possibility of returning T. to the godparents who had been caring for him, if sufficient wraparound services could be provided.

On July 14, 2008, the juvenile court ordered that both children receive psychotherapy with "seasoned licensed professionals" and that M.'s therapist have experience with children who had been sexually abused. The court further ordered that both children be evaluated for special assistance rate funds and that T. be referred for day treatment and a psychotropic medication evaluation.

### **4. Second Section 366.26 Proceedings**

In June 2008, M. and T. were placed with separate foster families. In a November 2008 section 366.26 report, the Department reported that both children remained placed in their respective foster homes. Although M. was not performing at grade level at school, her caregivers reported that she worked hard. M.'s caregivers had no concerns with M.'s behavior and said that she was doing well in their home. T.'s foster parent

expressed concerns about his emotional status. She said that T. was aggressive with other children and was very hyperactive. He required constant supervision.

The social worker reported that she had interviewed six different parties, all of whom had expressed interest in either adoption or legal guardianship for one or both children. These parties included the current foster parents, a maternal aunt, the maternal grandmother, and the paternal grandmother.

On November 19, 2008, the juvenile court continued the matter to allow timely notice to the parents of the section 366.26 hearing. Minors' counsel expressed concerns that the Department had identified some of the children's relatives as prospective adoptive parents and asked that the children not be removed from their current foster homes without court order. The juvenile court signed a written order that the children not be removed from their current foster homes absent a court order.

In a December 2008 review report, the Department reported that mother had contacted the social worker to inquire about the pending permanency planning hearing and to inform the social worker that she was in a residential treatment facility. M. was in the second grade but achieving below grade level. Her teacher reported that she was disruptive in class. M.'s behavioral problems prompted her foster parents to obtain a referral for therapy. T.'s caregiver reported that he was not doing well in kindergarten and was receiving negative behavior reports on a daily basis. His teachers, the social worker and the foster parents met to discuss a shortened day schedule, day program services, and therapy.

Attached to the December 2008 report were concurrent planning assessments for both children. M.'s foster mother had told the social worker she was interested in adopting both M. and T. T.'s foster mother was also interested in adopting both children. In addition, the paternal grandmother and the children's maternal uncle both said they wished to adopt both children.

In March 2009, the Department filed an ex parte application seeking orders to publish notice to mother, whose whereabouts were again unknown. A March 4, 2009 quarterly report prepared by M.'s foster family agency noted that M. appeared to be



developing a strong attachment to her foster parents, whom she referred to as “Mom” and “Dad.” The agency reported that M.’s foster parents met all of her needs and were in the process of adopting M.

In June 2009, the Department reported that M. was attending individual and family therapy sessions and that she showed “very good progress and level of involvement.” Although M.’s teacher was recommending that she repeat the second grade, her foster parents stated that they preferred to enroll her in summer school and explore tutoring options. M.’s teachers also reported that she had shown great progress toward the end of the school year. The Department’s social worker noted that M.’s foster father was an experienced elementary school teacher and that both foster parents were willing to support M. in developing academically. The social worker further noted that M.’s foster parents, who were in the process of adopting M., provided her with excellent care, meeting both her basic needs and her special educational and behavioral needs.

T. had shown remarkable progress at school in the past year. He was in the middle of his class academically, improving his social skills, and willing to follow verbal directions. The school psychologist reported that T. no longer displayed attention deficit or emotional problems. T.’s foster parents also reported improved behavior. Because of his progress, T. was placed back in a full time kindergarten program.

The Department reported that it had located mother and that she was incarcerated. On June 9, 2009, the juvenile court ordered that mother be brought to court from her prison facility. In July 2009, the Department reported that both M.’s and T.’s foster parents had approved adoptive home studies.

Mother was present with her counsel at the August 4, 2009 section 366.26 hearing. The juvenile court admitted into evidence the Department’s reports, and at mother’s request, also admitted into evidence a status review report dated June 9, 2009. Mother’s counsel argued that the children had only one visit with each other in October 2008, and that their adoption into separate homes interfered with their sibling relationship.

The juvenile court found that neither the sibling exception nor the parent/child exception to terminating parental rights applied. The court further found by clear and

convincing evidence that both children were adoptable, that their respective adoptive parents wished to adopt them, and that there were no legal impediments to adoption. The juvenile court then terminated mother's parental rights. This appeal followed.

## **DISCUSSION**

### **I. Waiver**

Mother contends the order terminating parental rights must be reversed because the evidence does not support the juvenile court's finding that the children were adoptable. The Department disputes this contention, but also claims that mother forfeited the argument by failing to object to the juvenile court's finding of adoptability in the proceedings below. Mother did not waive the issue by failing to object below. "[A] claim that there was insufficient evidence of a child's adoptability at a contested hearing is not waived by failure to argue the issue in the juvenile court." (*In re Brian P.* (2002) 99 Cal.App.4th 616, 623.) We therefore address the merits of mother's claim.

### **II. Applicable Law and Standard of Review**

As a prerequisite to terminating parental rights under section 366.26, a court must find by clear and convincing evidence that the children are likely to be adopted within a reasonable time. (§ 366.26, subd. (c)(1).) "In determining adoptability, the focus is on whether a child's age, physical condition and emotional state will create difficulty in locating a family willing to adopt. [Citations.] To be considered adoptable, a minor need not be in a prospective adoptive home and there need not be a prospective adoptive parent "waiting in the wings." [Citation.] Nevertheless, 'the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family.*' [Citation.]" (*In re R.C.* (2008) 169 Cal.App.4th 486, 491.)

There are two alternative methods of demonstrating adoptability. "General adoptability" is demonstrated when an agency proves that a child's personal

characteristics are sufficiently appealing that it is likely an adoptive family will be located for the child in a reasonable time, regardless of whether a prospective adoptive family has yet been found. “Specific adoptability” refers to an agency’s demonstration that it has located a committed adoptive family for a child whose adoptability is otherwise in question, most often because the child is part of a sibling group, has a physical or mental disability requiring a high level of care, or is relatively old. (See § 366.26, subd. (c)(3).) When a prospective adoptive family has been found for such a child, the child is found likely to be adopted, not in the abstract, but because that specific adoptive family has committed to adoption. (See, e.g., *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1060-1061; *In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650.)

Because specific adoptability depends upon a successful adoption by the designated prospective adoptive family, the judicial inquiry must, to a limited degree, include that family. “When a child is deemed adoptable only because a particular caretaker is willing to adopt, the analysis shifts from evaluating the characteristics of the child to whether there is any legal impediment<sup>5</sup> to the prospective adoptive parent’s adoption and whether he or she is able to meet the needs of the child. [Citation.]” (*In re Helen W.* (2007) 150 Cal.App.4th 71, 80.) This limited inquiry into the characteristics of the prospective adoptive family is necessary because a demonstration that the family is legally prevented from adopting or is incapable of caring for a child with special needs would preclude a finding of adoptability. (See, e.g., *In re Carl R.*, *supra*, 128 Cal.App.4th at pp. 1061-1062; *In re Sarah M.*, *supra*, 22 Cal.App.4th at p. 1650.) Even in these situations, however, the inquiry must be balanced against the concern that “[i]f an inquiry into the suitability of prospective adoptive parents were permitted at the section 366.26 hearing, many hearings would degenerate into subjective attacks on those prospective adoptive parents--a result not envisioned by the statutory scheme. [Citation.]

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<sup>5</sup> The legal impediments to adoption are those set forth in Family code sections 8601, 8602, and 8603. (*In re G.M.* (2010) 181 Cal.App.4th 552.) Mother did not argue in the proceedings below, nor does she contend in this appeal that there are any legal impediments to adoption.

Those types of inquiries might also discourage people from seeking to adopt, a result that would contravene the strong public policy favoring adoption.” (*In re Carl R.*, at pp. 1061-1062.)

It is important to note that the law does not require a juvenile court to find a dependent child “generally adoptable” or “specifically adoptable” before terminating parental rights. (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1313.) All that is required is clear and convincing evidence of the likelihood that the child will be adopted within a reasonable time. (§ 366.26, subd. (c)(1); *In re Zeth S.* (2003) 31 Cal.4th 396, 406.)

We review the juvenile court’s finding of adoptability for substantial evidence, viewing the evidence in the light most favorable to the judgment, drawing every reasonable inference and resolving all conflicts in the evidence in favor of the juvenile court’s order. (*In re Josue G.* (2003) 106 Cal.App.4th 725, 732.)

### **III. Substantial Evidence Supports the Finding of Adoptability**

Mother contends that neither M. nor T. were generally adoptable because of their mental health issues and behavioral problems, including M.’s sexualized conduct, and T.’s aberrant behavior at school and at home. Mother cites Collister’s opinion, set forth in his Evidence Code section 730 psychological evaluation, that T. displayed flagrant oppositional defiance and was possibly bipolar, as further evidence that the children’s behavioral problems precluded a finding of general adoptability.

The juvenile court may properly consider a prospective adoptive parent’s willingness to adopt as evidence that a child is likely to be adopted within a reasonable time. (*In re A.A.*, *supra*, 167 Cal.App.4th at p. 1313.)

In November 2008, the Department identified multiple parties who wished to adopt both children, including the respective foster parents, a maternal aunt, maternal grandmother, paternal grandmother, and maternal uncle. In March 2009, the foster family agency reported that M.’s foster parents not only wished to adopt her, but were in the process of doing so. Both M.’s and T.’s prospective adoptive parents had approved adoption home studies by the time of the August 9, 2009 section 366.26 hearing.

The prospective adoptive parents' willingness to adopt distinguishes the instant case from the cases mother cites to support her position. In the cases on which mother relies, no potential adoptive parent was identified, or the foster parents caring for the subject minors were unwilling to adopt. (*In re Tamneisha S.* (1997) 58 Cal.App.4th 798 [Department tried unsuccessfully to locate a potential adoptive family]; *In re Brian P.* (2002) 99 Cal.App.4th 616 [minor's foster parent was unwilling to adopt]; *In re Amelia S.* (1991) 229 Cal.App.3d 1060, 1062 [of caregivers for 10 minors with various developmental, physical and emotional problems, two sets of foster parents were *considering* adoption, two sets of foster parents did not wish to adopt children, and one set of foster parents had no intention to adopt].) Here, the prospective adoptive parents with whom M. and T. had been placed for more than a year, were aware of the children's respective emotional, psychological, and behavioral issues and wished to adopt them. Both sets of prospective adoptive parents had approved adoption home studies. M.'s prospective adoptive parents were actively pursuing adoption. Substantial evidence supports the finding that both children were adoptable.

Mother contends the juvenile court failed to consider whether the prospective adoptive parents had the qualifications necessary to handle both minors' serious behavior disorders. She cites the children's "severe behavior problems" and "serious mental health issues," along with Collister's recommendations that the children's caregivers be trained in specialized behavior modification techniques as the bases for arguing that such an inquiry was necessary.<sup>6</sup> Mother presented no evidence that the prospective adoptive parents were incapable of meeting the children's needs, and there was substantial evidence to the contrary. Both the foster family agency and the Department's social worker reported that M.'s prospective adoptive parents were meeting all of M.'s basic and specialized behavioral needs.

T.'s marked progress at school and in the home while placed with his prospective adoptive parents was evidence of their ability to meet his specialized needs. During T.'s

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<sup>6</sup> Mother does not argue on appeal, nor did she argue below, that there was any legal impediment to adoption by either set of prospective adoptive parents.

placement with his prospective adoptive parents, he moved from the bottom to the middle of his class academically, improved his social skills, and demonstrated a willingness to follow verbal directions. He no longer displayed attention deficit or emotional problems at school, and his behavior at home improved as well. T.'s progress enabled him to return to a full time kindergarten program. There was substantial evidence that both children's prospective adoptive parents were meeting the children's basic and specialized needs.

### **DISPOSITION**

The order terminating parental rights is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, Acting P. J.  
DOI TODD

\_\_\_\_\_, J.  
ASHMANN-GERST